

Appl. No. 09/886,014
Amdt. dated October 29, 2004
Reply to Office action of June 3, 2004

REMARKS/ARGUMENTS

This amendment is responsive to the office action dated June 3, 2004. Claims 1 – 37 are pending in the application. Claims 1 – 37 stand rejected. Claims 38 and 39 are new.

Because of the addition of 2 new claims, including 1 independent claim, additional fees of \$124.00 are included with the accompanying fee transmittal and the Commissioner is hereby authorized to charge deposit account 022095 for the claim fees, as indicated in the fee transmittal form. The Commissioner is further authorized to credit any overpayments or charge any additional fees to the same deposit account.

Objections to Drawings

The Examiner has objected to the drawings under 37CFR 1.83(a), on the basis that the drawings do not show every feature of the invention specified in the claims.

The Examiner has pointed to features in the claims, which he asserts are not shown in the drawings. The drawings are amended herewith to introduce a new Figure 17, similar to Figure 14, showing a fastener details page with multiple location information boxes 284 shown on the page, corresponding to the claimed feature of showing a location of the fastener in two or more retail establishments. Further, a new Figure 18 is added, showing a computer having fastener pages 200 accessible thereto and the computer being located remotely from a retail establishment. Figure 18 also shows the computer being in communication with a network, as described in the specification, at paragraph [0062].

Further, Figures 6, 7, 13 and 14 are amended to show a link, in the form of a button 283, for displaying real time information relating to the availability of the selected fastener. Figure 4 is amended to correct erroneous reference numerals.

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By virtue of the above-described amendments to the drawings, it is submitted that the claim features asserted by the Examiner to be absent from the drawings are now shown in the drawings and, accordingly, the features are not cancelled from the claims. It is believed that no new matter has been added by the amendments to the drawings.

Claim Rejections Under §112

The Examiner has rejected claims 7 – 10, 19 – 29, 36 and 37 under §112 as being indefinite.

With respect to claim 7, the Examiner notes that, as recited in the claim 1, the user interface is a software feature, but that in claims 7, it is recited that the interface includes a personal computer and monitor. Claims 1 and 7 are amended to address the Examiner's rejection. Specifically, claim 1 is amended in relevant part to recite "said software having computer program instructions configured to cause a computer to provide a user interface." Claim 7 is amended in relevant part to recite "said user interface ~~includes~~ is provided by a personal computer and monitor." It is submitted that the amendments to claims 1 and 7 more clearly recite the software features separately from the hardware features and, accordingly, claim 7 is not indefinite.

With respect to claims 8 and 9, the Examiner rejects these claims as being indefinite because they recite that the software is given to users on a medium, whereas claim 1 recites that the retailer provides consumers access to a computer. Claim 1 as amended recites "providing consumers with access to merchandising software" rather than access to a computer. It is submitted that the amended wording of claim 1 is consistent with the original wording of claims 8 and 9 and, accordingly, claims 8 – 10 are not indefinite.

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With respect to claims 19 – 26, the Examiner rejects these claims as being indefinite, as claim 19 recites selecting a specific fastener type, going to a next page showing fasteners of that type and then repeating the steps. The Examiner states that “as understood from the specification, the user then looks at sub groups within the first group, not relecting (sic) the first selected group.” Claim 19 is amended so as to cancel step (iv) of claim 19, which required “repeating steps (ii) and (iii) one or more times”. By this amendment, it is submitted that the Examiner’s indefiniteness rejection of claim 19 and claims 20 – 26 dependent thereon is overcome.

With respect to claim 27, the Examiner rejects it as being unclear because it recites (c) twice. Claim 27 is amended to replace the second occurrence of “(c)” with “(d)”. Accordingly, amended claim 27 is not indefinite.

With respect to claim 28, the Examiner rejects that claim for being indefinite because it recites “selecting the particular fastener” as part of (b) of claim 27. The Examiner states “as recited the claim has the particular fastener selected in (b), (c) since it repeats (b), and (d).” Claim 28 is amended so as to further define the step of selecting the particular fastener, rather than repeating performance of that step. Accordingly, amended claim 28 and original claim 29 are not indefinite.

With respect to claim 36, the Examiner has rejected this claim for being indefinite because it is unclear what is meant by “C35”. Claim 36 is amended to refer to claim 32 instead of “C35”. Accordingly, amended claim 36 and original claim 37 are not indefinite.

For the reasons described above, it is submitted that the amendments made herewith overcome the Examiner’s rejections under §112.

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Claim Rejections Under §101

The Examiner has rejected claims 30 – 35 as being directed to non-statutory subject matter under §101. The Examiner asserts that claims 30 – 35 recite only a non-function data structure and that that structure is *per se* non-statutory.

Claim 30 is amended to recite, in relevant part, “a computer readable medium having stored thereon computer program instructions, which when executed by a computer, cause ~~containing~~ a collection of pages to be ~~capable of being~~ displayed on a user interface of the computer device”. It is submitted that the amendments to claim 30 are such that the claim now recites appropriate statutory subject matter. By virtue of their dependence on claim 30, it is submitted that dependent claims 31 – 37 also recite statutory subject matter.

Claim Rejections Under §103(a)

The Examiner has rejected claims 1 – 10 as being unpatentable over Cohen et al (6,507,352) in view of Brewaeys et al (4,408,693) under §103(a).

Aspects of the present invention are generally directed to addressing problems associated specifically with vending fasteners in a retail environment. As described in the background section of the specification of the present application, the vending of fasteners to retail consumers presents significant challenges that are not generally encountered in retailing other goods. There are numerous varieties of fasteners and, for each variety of fasteners, there are usually many types and many sizes of each type. Further, each size and type may come in a variety of materials. Screws alone can account for over 1,000 different specific products in a retailer's stock.

Many fastener products are suited for particular applications, while not being particularly suited for other uses. Typically, consumers in need of a fastener are not versed in all of the different varieties of fasteners available and may have difficulty

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selecting the most appropriate fastener for a situation. Even when the appropriate fastener product is known, it is often a time-consuming process for the consumer to find precisely where the appropriate fastener is located within the retail establishment.

Recent retail trends in hardware retail have resulted in very large home improvement centers becoming popular. These centers typically provide larger product lines than local hardware stores and there is consequently a greater likelihood that a specific fastener will be more difficult for a consumer to locate amidst the numerous other smaller products. Further, large home improvement centers typically encourage self-service, particularly in relation to products like fasteners which have a very low profit margin for the retailer.

Whether in a small or large hardware store, because of the inherent difficulties in selecting and locating an appropriate fastener amongst the numerous different fastener varieties, types, sizes and materials, consumers are likely to seek assistance from a customer service representative. However, consumer purchases of fastener products are generally for relatively low dollar amounts and the cost to the retailer of having their customer service staff continually providing time-consuming consultations to consumers on such low profit margin products as fasteners can have a significantly negative impact on the profitability of selling fasteners.

It is in the context of vending fasteners, which by their very nature, require treatment different to other retail productions, that the present invention was created, in order to facilitate profitable sales of fasteners and provide customer satisfaction by being a "user-friendly" retail establishment.

By contrast, in a retail setting such as a department store, there is typically sufficient profit margin associated with the product lines carried by the department store that the department store can support a number of sales staff to help consumers make their product selections and purchases. Further, products carried by a department store, such as hi-fi equipment or televisions, may be stocked in some variety, but the

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consumer may readily browse the available varieties of such products without requiring such close and time-consuming inspection as would be required with fastener products.

Brewaeys discloses a blister pack, which is described as "a box-shaped holder for bringing to sale the most varied goods. Such blister packs are much used for selling spikes, screws, washers, plugs, etc." (column 1, lines 528). Brewaeys does mention screws, which is one type of fastener, but Brewaeys is directed to teaching an improved blister pack, rather than selling numerous varieties of fasteners. Brewaeys does not refer to "fasteners", nor does Brewaeys contain any relevant disclosure beyond the mere mention of screws. Brewaeys therefore does not touch fasteners or address ways of vending or selecting fasteners. Brewaeys points to certain problems faced in structural aspects of forming and using blister packs. The object of Brewaeys is "to provide a blister pack which can easily be cut out from the support it is welded on, whereby the holder with cover released from said support may be used as box (sic)." (Column 1, lines 31 to 35).

The Examiner has not provided a rationale for combining Cohen et al and Brewaeys. Accordingly, it is submitted that the Examiner has not made a *prima facie* case of obviousness.

There is no suggestion or motivation in either Cohen et al or Brewaeys that the teachings of each reference should be combined with each other. Cohen et al relates to an interactive retail terminal for performing a retail transaction in an environment such as a department store. Brewaeys teaches a blister pack. Neither reference contains any basis for combining the references. It is submitted that the Examiner is employing impermissible hindsight by using the applicant's teachings to hunt through prior art to find the claimed elements and then combine them as claimed.

Further, it is submitted that Brewaeys is non-analogous art with respect to the claimed invention. Brewaeys teaches a blister pack made of plastic and cardboard specifically designed to be easily cut from the support it is welded on. Thus, the person

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skilled in the art of Brewaeys would be a person familiar with techniques of forming blister packs by "welding" plastics and paper materials together. Brewaeys does not relate to vending numerous varieties of fasteners using computer software. Brewaeys is not within the same field of endeavor as that of the present applicants and is directed to solving a problem of an entirely different character to the problems addressed by the present invention. Accordingly, it is submitted that Brewaeys is non-analogous art and the Examiner's obviousness rejection of claims 1 to 10 is not based on a proper combination of references.

Further, Brewaeys does not teach or suggest "stocking numerous varieties of fasteners at a retail outlet", as recited in claim 1, as Brewaeys fails to disclose numerous varieties of fasteners. Rather, Brewaeys discloses a particular blister pack structure. Additionally, Cohen et al do not disclose "numerous varieties of fasteners".

The references, in combination, do not disclose all of the features of claim 1. In particular, the combination of Cohen et al and Brewaeys does not disclose vending fasteners to retail consumers, involving stocking numerous varieties of fasteners at a retail outlet in selected locations, and providing a user interface...displaying icons describing the numerous varieties of fasteners and...displaying the retail location identifiers in corresponding to the locations at which the fasteners are stocked. This is because each of Brewaeys and Cohen et al fails to disclose numerous varieties of fasteners and therefore cannot disclose icons describing those fasteners, nor disclose retail location identifiers corresponding to the locations at which the numerous varieties of fasteners are stocked.

For the reasons given above, it is respectfully submitted that the Examiner's rejection of claims 1 to 10 as being obvious over Cohen et al in view of Brewaeys is traversed.

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The Examiner has rejected claims 11 – 13, 14, 16, 17 and 30 – 37 under §102(e) as anticipated by or, in the alternative, under §103(a) as obvious over Cohen et al.

Regarding the Examiner's rejection of these claims under §102(e), applicants respectfully submit that Cohen et al do not disclose all of the claimed limitations. Claim 11, as amended, recites a fastener selection system. As noted previously, fastener selection carries with it certain inherent problems due to the nature of fasteners and the present invention is specifically directed to addressing such problems in fastener selection and retailing.

Further, claim 11 relates to displaying pages on a user interface, where some of the pages include icons for selecting one or more types of fasteners and where the detail pages include information describing a selected type of fastener. Accordingly, claim 11 does not recite a system storing mere information. The display of fastener information to facilitate fastener selection is therefore a meaningful limitation of the claim. Cohen et al do not disclose fastener selection or displaying fastener information and therefore Cohen et al cannot anticipate claim 11 or claims dependent thereon. In particular, as Cohen et al does not disclose all of the features of claim 11, from which claims 12, 13, 14, 16 and 17 depend, Cohen et al cannot anticipate dependent claims 12, 13, 14, 16 and 17.

Claim 30 has corresponding limitations to those of claim 11 and it is therefore submitted that Cohen et al do not anticipate claims 30 – 37 for similar reasons to those described above in relation to claims 11 – 13, 14, 16 and 17.

With respect to the Examiner's alternative rejection of claims 11 – 13, 14, 16, 17 and 30 – 37 under §103(a) as being obvious over Cohen et al, it is respectfully submitted that it would not have been obvious to one of ordinary skill in the art to modify the teaching of Cohen et al to specifically apply it to fastener selection or any products of a like nature, such as small, high-variety, low-margin products of mechanical use.

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Cohen et al make no recognition of the particular problems associated with selecting and vending fasteners, nor do Cohen et al make any suggestion that their interactive retail terminal should be modified to facilitate selection and vending of fasteners. Accordingly, the person of ordinary skill in the art would not be motivated to modify Cohen et al to apply to vending fasteners.

Accordingly, it is submitted that none of claims 1 – 13, 14, 16, 17 and 30 – 37 would have been obvious to one of ordinary skill in the art over Cohen et al as the person of ordinary skill would not have been motivated to modify Cohen et al to arrive at the recited claims.

The Examiner has rejected claims 18 – 23 as being unpatentable over Johnson (5,283,865) in view of Brewaeys et al under §103(a).

The disclosure of Brewaeys has been discussed above. As contended above, Brewaeys does not disclose numerous varieties of fasteners as Brewaeys is directed to a blister pack. Johnson describes a computer assisted parts sales system particularly suited to sales of parts such as automotive parts and other parts for which a sales assistant can be cost-effective. Johnson does not teach fastener selection or numerous varieties of fasteners, nor does Johnson teach a collection of pages describing various types of fasteners. Accordingly, as neither Johnson nor Brewaeys alone or in combination disclose all of the features of claim 18, Johnson and Brewaeys are not properly combined and cannot render obvious the subject matter of claim 18 or dependent claims 19 – 23.

Further, there is no motivation in either Johnson or Brewaeys to combine these references. Brewaeys teaches a blister pack, while Johnson teaches a system for helping a sales assistant to make a sales pitch and process sales of parts such as automotive products. Neither reference provides any suggestion or motivation to combine blister pack teachings with a parts sales system to arrive at the invention recited in claims 18 to 23. Specifically, neither Brewaeys nor Johnson provides any

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motivation to combine their respective disclosures to arrive at a method of selecting a fastener suitable for a particular purpose from a collection of numerous varieties of fasteners as claimed in claims 18 – 23. Johnson teaches away from fasteners as it is directed to assisting sales assistants to log sales orders for parts sales. As fasteners would not be a cost-effective part to be sold in such a parts sales system, due to their low margin and large number of different varieties and the relatively high cost of paying the wage of a sales assistant, a person skilled in the art would not be motivated to modify Johnson so as to apply it to vending or selecting fasteners.

Further, as contended above, it is submitted that Brewaeys is non-analogous art. Brewaeys teaches a blister pack made of plastic and cardboard specifically designed to be easily cut from the support it is welded on. Thus, the person skilled in the art of Brewaeys would be a person familiar with techniques of forming blister packs by "welding" plastics and paper materials together. Brewaeys does not relate to vending numerous varieties of fasteners using computer software. Brewaeys is not within the same field of endeavor as that of the present applicants and is directed to solving a problem of an entirely different character to the problems addressed by the present invention. Accordingly, Brewaeys is not properly combined with Johnson and the Examiner's rejection of claims 18 – 23 is not based on a proper combination of references.

Further, it is noted that the Examiner has not provided a rationale for combining Johnson and Brewaeys. Accordingly, the Examiner has not made out a *prima facie* case of obviousness as alleged with respect to claims 18 – 23.

The Examiner has not provided any explanation or rationale for his position that claims 20 – 23 would be unpatentable under §103(a) over Johnson in view of Brewaeys. Indeed, the Examiner has not indicated whether any or all of the limitations of claims 20 – 23 are disclosed by Johnson in view of Brewaeys. Accordingly, it is submitted that the Examiner has not made out a *prima facie* case of

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obviousness against claims 20 – 23 based on the combination of Johnson and Brewaeys.

For the above reasons at least, it is submitted that claims 18 – 23 are not properly rejected under §103(a) as being unpatentable over Johnson in view of Brewaeys.

The Examiner has rejected claims 20 – 23 under §103(a) as being unpatentable over Johnson in view of Brewaeys et al as applied to claims 18 and 19 above, and further in view of Cohen et al.

As contended above in relation to the rejection of claims 18 – 23 as being unpatentable over Johnson in view of Brewaeys, there is no motivation to combine Johnson with Brewaeys. Nor is there any motivation to combine Cohen et al with Brewaeys or Johnson with Cohen et al. In fact, as noted above, Johnson teaches away from fasteners as it is directed to assisting sales assistants to log sales orders for parts sales. As fasteners would not be a cost-effective part to be sold in such a parts sales system, due to their low margin and large number of different varieties and the relatively high cost of paying the wage of a sales assistant, a person skilled in the art would not be motivated to modify Johnson so as to apply it to vending or selecting fasteners. Further, Brewaeys does not even teach selecting fasteners as Brewaeys relates to a modified blister pack construction.

It is therefore submitted that Johnson, Brewaeys and Cohen et al are not properly combined as none of the references contains any motivation or suggestion to combine their respective disclosures, and further because Johnson teaches away from the invention. Further, even if Johnson, Brewaeys and Cohen et al are combined, the combination of references does not teach selecting a fastener suitable for a particular purpose from a collection of numerous varieties of fasteners, nor a collection of pages describing various types of fasteners, because none of Brewaeys, Johnson or Cohen et al teaches numerous varieties of fasteners.

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With respect to claims 21 and 22, the Examiner concedes that Johnson in view of Brewaeys and Cohen et al do not show providing real time stock information. However, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to modify the method of Johnson by providing real time stock information. However, Johnson does not contain any motivation for such a modification. It is submitted that to raise such an objection is to indulge in impermissible hindsight by hunting through the part to find each of the claimed elements and by supposing that one of ordinary skill in the art would have modified Johnson to arrive at the claimed feature of providing real time stock information about a particular fastener when there is no motivation for such a modification or reason for supposing that a person of ordinary skill in the art would seek to make such a modification.

For the above reasons at least, it is submitted that the Examiner's rejection of claims 20 – 23 as being unpatentable over Johnson in view of Brewaeys and further in view of Cohen et al is traversed.

The Examiner has rejected claims 27 – 29 under §103(a) as being unpatentable over Cohen et al in view of Brewaeys et al.

The Examiner concedes that Cohen et al do not show comparing a type of fastener with a sample fastener. This is not shown by Brewaeys either. The Examiner alleges however, that it would have been obvious to one of ordinary skill in the art "to modify the method of the claim" to insure getting a similar fastener to the sample.

Similar arguments to those provided in relation to rejection of claims 1 – 10 above over Cohen et al in view of Brewaeys are applicable to the rejection of claims 27 – 29 over the same art. In particular, as contended above, Brewaeys is non-analogous art. For this reason and because neither reference contains any teaching which might motivate a person of ordinary skill in the art to combine the references, the person of ordinary skill in the art would not be motivated to combine the teachings of

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Brewaeys and Cohen et al. Even if the person of ordinary skill in the art had such a motivation, despite such motivation not being given by either of Cohen et al or Brewaeys, Brewaeys does not disclose various types of fasteners. Neither do Cohen et al disclose fasteners. Further, Cohen et al does not disclose or suggest a method of locating a particular product similar to a sample product, let alone a particular fastener similar to a sample fastener. Nor do Cohen et al teach pages describing various types of fasteners as Cohen et al do not teach fasteners. Further, Cohen et al do not teach or suggest progressively selecting a type of fastener more closely resembling the sample fastener.

There is no suggestion or motivation in either Cohen et al or Brewaeys that the teachings of either reference should be combined with each other. Cohen et al relates to an interactive retail termination for performing a retail transaction in an environment such as a department store. Brewaeys teaches a blister pack. It is submitted that the Examiner is employing impermissible hindsight by using the applicant's teachings to hunt through prior art to find the claimed elements and then combining the elements as claimed. In particular, the Examiner is submitted to be employing impermissible hindsight by alleging that it would have been obvious to one of ordinary skill in the art to modify "the method of the claim" and thereby allege obviousness based on unrelated art and theoretical behavior of a person of ordinary skill in the art despite the lack of any motivation to make such a combination.

It is noted that the Examiner has not provided any reasoning or rationale for his rejection of dependent claims 28 and 29. The Examiner has not shown that the limitations of dependent claims 28 and 29 are taught by the cited references. Accordingly, the Examiner has not made out a *prima facie* case of obviousness against claims 27 – 29.

For the above reasons at least, it is submitted that the Examiner's rejection of claims 27 – 29 under §103(a) as being unpatentable over Cohen et al in view of Brewaeys is traversed.

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The Examiner has rejected claims 1 – 15, and 18 – 26 as being unpatentable over Treyz et al (6,587,835) in view of Brewaeys et al (4,408,693) under §103(a).

Treyz et al teach a hand-held computing device for assisting a user in a shopping establishment as such as a shopping mall (column 1, lines 19 to 22). the hand-held computing device may display product information when the user is in a store, including product information from multiple manufacturers. If desired, product information may be organized in various product categories. (Column 2, lines 48 to 56). Treyz et al does not disclose or suggest vending fasteners.

Brewaeys teaches a blister pack while Treyz et al teaches a hand-held computing device which can display product information. Both references are completely unrelated and indeed Brewaeys is submitted to be non-analogous art, for reasons given above. Neither Brewaeys nor Treyz et al provide any motivation or suggestion for combining their teachings or modifying the teachings of either reference to arrive at the claimed invention. Further, even if Treyz et al were properly combined with Brewaeys, neither reference teaches fasteners and therefore neither reference can teach stocking numerous varieties of fasteners or selecting a fastener from a collection of numerous varieties of fasteners.

The Examiner alleges that Treyz et al in view of Brewaeys shows all elements of claims 2 – 6. However, in addition to the reasons given above in relation to claim 1, it is submitted that Brewaeys and Treyz et al in combination do not teach all of the limitations of at least claim 2. In particular, neither of Brewaeys nor Treyz et al teaches stocking numerous varieties of fasteners in pre-determined containers, readily identifiable by visible container identifiers, and wherein the container identifiers are displayed on the user interface.

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Regarding claim 7, apart from being distinguishable from Treyz et al and Brewaeys by virtue of its dependence on claim 1, claim 7 recites that the user interface is provided by a personal computer and monitor. This is not taught by Treyz et al nor Brewaeys, nor is there any motivation in either reference to modify the reference to arrive at the features of claim 7.

It is noted that the Examiner has not provided any reason or rationale for his rejection of claim 8. It is submitted that neither Treyz et al nor Brewaeys teaches or suggests the limitations of claim 8. By virtue of its dependence on claims 7 and 1, and because it recites further distinguishing features, it is submitted that claim 8 is allowable over Treyz et al in view of Brewaeys.

Claims 11 – 15 are also submitted to be patentably distinguished from Treyz et al in view of Brewaeys as neither reference, either alone or in combination, discloses or suggests a fastener selection system having fastener selection pages and fastener detail pages, as recited in claim 11. Claims 12 – 15 depend directly or indirectly on claim 11 and are submitted to be patentably distinguishable over Treyz et al in view of Brewaeys for the reasons given in relation to claim 11 and because they contain further distinguishing features.

Claims 18 – 26 are submitted to be patentably distinguished over Treyz et al in view of Brewaeys because neither Treyz et al nor Brewaeys, either alone or in combination, teaches or suggests a method of selecting a fastener from a collection of numerous varieties of fasteners, nor does either reference teach or suggest accessing a collection of pages describing various types of fasteners. Dependent claims 19 – 26 are submitted to be patentably distinguished for reasons similar to those provided in relation to claim 18 and by virtue of reciting further patentable features.

Claims 38 and 39 are new and are based on original claims 1 and 2, respectively. New claim 38 is narrower than original claim 1 in that it recites "providing at said retail outlet a computer programmed with fastener merchandising software and

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accessible to said retail consumers, said computer having a user interface...", rather than the limitation of claim 1, as amended, of "providing consumers with access to merchandising software, said software having computer program instructions configured

to cause a computer to provide a user interface...". Accordingly, new claim 38 requires the computer having the fastener information to be located at the retail outlet. This is described, for example, at paragraph 21 of the present specification. New claims 38 and 39 are submitted to be allowable over the cited references for similar reasons to those described in relation to claims 1 and 2. No new matter is added.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Attachments: Replacement sheets (Figs. 4, 6, 7, 13 and 14).
Annotated sheets showing changes.
New drawings sheets including new Figs. 17 and 18.